

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: REAL PROPERTY TAX SERVICES

DATE: OCTOBER 28, 2014

COMMITTEE MEMBERS PRESENT: OTHERS PRESENT:

SUPERVISORS MONROE
MCDEVITT
MERLINO
BEATY

LEXIE DELUREY, DIRECTOR OF REAL PROPERTY TAX SERVICES
KEVIN B. GERAGHTY, CHAIRMAN OF THE BOARD
JOANN MCKINSTRY, ASSISTANT TO THE COUNTY ADMINISTRATOR
MARTIN AUFFREDOU, COUNTY ATTORNEY
JOAN SADY, CLERK OF THE BOARD

COMMITTEE MEMBER ABSENT:

SUPERVISOR DICKINSON

FRANK E. THOMAS, BUDGET OFFICER

SUPERVISORS BROCK
GIRARD
SIMPSON
WOOD

MIKE SWAN, COUNTY TREASURER

DON LEHMAN, *THE POST STAR*

SARAH MCLENITHAN, SECRETARY TO THE CLERK OF THE BOARD

Mr. Monroe called the meeting of the Real Property Tax Services Committee to order at 9:31 a.m.

Motion was made by Mr. Merlino, seconded by Mr. McDevitt and carried unanimously to approve the minutes of the previous Committee meeting, subject to correction by the Clerk of the Board.

Privilege of the floor was extended to Lexie Delurey, Director of Real Property Tax Services, who distributed copies of her agenda to the Committee members; *a copy of the agenda is on file with the minutes.*

Commencing the agenda review, Ms. Delurey presented a request to authorize the conveyance of lands offered at the Tax Foreclosure Auction held on October 18, 2014, disposing of certain lands acquired by Warren County pursuant to Real Property Tax Foreclosure. She advised all but two parcels offered for sale were sold at the auction. She said the outstanding taxes due on all of the parcels sold totaled \$149,089.61 and the proceeds from the auction totaled \$659,352. Ms. Delurey apprised she was going to meet with the County Attorney to discuss what could be done with the two parcels that did not sell. She stated one of the parcels was located in the Town of Hague and the other was located in the Town of Warrensburg. She apprised she had mailed letters to the neighboring property owners in September notifying them these parcels would be eligible for purchase at the County land auction; however, she said, no one expressed interest in them. She noted the parcel located in the Town of Queensbury that sold for \$1 was purchased by the neighbor who already used the property, as she was unaware the parcel was not part of her own property. She explained this particular parcel would have been of no use to others, as it was fenced in with the purchasers property.

Mr. Monroe questioned what the difference between the 200 and 300 class code was and Ms. Delurey replied the 200 class code referred to residential property and the 300 class code related to vacant land. Mr. Monroe pointed out the properties with single family homes on them sold for substantially more than the taxes owed on them. Ms. Delurey explained these particular parcels sold based upon the market value of the home rather than the total amount of taxes due on them. Mr. Monroe queried what class code 240 referred to, noting there was a property of this classification that had sold for a substantial amount of money. Ms. Delurey apprised this particular property was

a single family home with a substantial amount of acreage.

Martin Auffredou, County Attorney, reminded the Committee that upon the request of Ms. Delurey and the County Treasurer, some changes had been put in place to ensure these Auction transactions would be completed prior to the end of the year. He stated his Office had developed an early access form that was signed by the County Treasurer that was utilized by successful purchasers who wanted to access their purchased properties prior to the deed being conveyed. As an example, he said that a purchaser may want to access the property early to drain the water pipes to ensure there was no damage to the structure. He mentioned the form protected the County while permitting the prospective property owner the opportunity to access the property and take protective measures between now and the onset of cold weather. He commented last year they permitted a prospective buyer early access so they could address their roofing concerns. He noted they worked with these individuals to assist them with protecting their new assets.

Motion was made by Mr. Merlino, seconded by Mr. Beaty and carried unanimously to approve the request as presented and the necessary resolution was authorized for the November 21, 2014 Board meeting. *A copy of the resolution request form is on file with the minutes.*

With regards to Pending Items, Ms. Delurey advised the County Treasurer was in attendance to provide feedback with regards to approving a resolution opposing the New York State Law requiring delinquent taxpayers to pay taxes in order of newest to oldest in the cases of impending foreclosure action which would be forwarded to the State Legislature. Mr. Monroe advised New York State Tax Law used to allow property owners to credit payments made on outstanding taxes to the oldest taxes due, preventing them from being included in a foreclosure proceeding. He continued, the law was amended in 1995 directing that when property owners made payments on outstanding taxes, the payments would be credited to the most current taxes due rather than the oldest taxes due. He stated this placed a significant strain on property owners, as it required them to pay all past due taxes to ensure their property would not be foreclosed upon. He added another amendment to the law required property owners to enter into one installment agreement for multiple parcels rather than allowing them to enter into separate installment agreements for various parcels. He pointed out this meant a property owner could not elect to save certain parcels and forfeit others to the foreclosure process. He commented the Board of Supervisors had opposed these changes when they were put into place by the State Legislature and he felt a resolution should be approved urging the State Legislature to revert back to the previous method.

Mike Swan, County Treasurer, apprised he had no objection to reverting back to the old method; however, he stated, he felt it was highly unlikely the State Legislature would act upon this request. Mr. McDevitt questioned whether this was a State Law and Mr. Monroe replied affirmatively.

Mr. Monroe advised he felt the law was unfair because it dictated that a property owner with multiple parcels in one installment agreement would lose all parcels even if they were able to come up with the majority of the total amount due and Mr. Beaty concurred. As an example he stated, if an individual with five parcels in an installment agreement was able to pay off \$40,000 of the \$50,000 they owed, they would still lose all of the parcels for failure to make a payment in full and bring the property taxes current.

Mr. Monroe stated one of his concerns was that the way the law was structured made it difficult for property owners who had been in arrears for a few years to save their property from foreclosure since any payments made were credited to the newest taxes. He pointed out the majority of the individuals who fell behind on their taxes did so because of circumstances that were beyond their

control such as divorce, death, disability or a downturn in their business. He commented he felt the law was not properly structured. He apprised he believed the best interest for the County was for property owners to retain ownership of their properties. He suggested a resolution urging the State Legislature to revert back to the allowing Real Property Tax Payments to be applied to the oldest taxes due rather than the most current taxes and allow for property owners to enter into multiple installment agreements rather than require one installment agreement for multiple properties.

Mr. Auffredou pointed out this meant that if a property owner had multiple installment agreements and they defaulted on one of them, it would have no bearing on the others as long as the payments remained current on each. He continued, the other request was to amend the State Law and allow for delinquent Real Property Tax Payments to be applied to the oldest taxes due rather than the most current taxes to prevent properties from being included in the foreclosure proceedings.

Mr. Monroe advised although it was unlikely the State Legislature would act upon the request he felt it was worthwhile to make the request. Mr. Beaty questioned why it was likely the State Legislature would take no action. Mr. Monroe explained the reason the State amended the Law in 1995 was to assist downstate municipalities such as Long Island who were struggling with collecting delinquent taxes. Mr. Beaty apprised he saw no advantage to the way the law was currently structured, as he felt the universal goal State-wide was to ensure property owners retained ownership of their properties. Mr. Monroe said he believed the downstate municipalities may have pushed for the law to be amended in 1995 to assist the Counties with increasing their cash flow; however, he stated, he believed it was more important to assist property owners with retaining their property.

Mr. Swan apprised one of the reasons for the change was to create a uniform method for handling these matters State-wide. He said the amendment ensured that if someone else paid the past due taxes on your property they could not take ownership of the property from you. He explained during the 1990's the property taxes in the downstate area substantially increased causing individuals to fall perpetually behind on their taxes. He explained this meant the individuals who fell behind on their taxes were only paying the oldest taxes due to prevent their properties from being foreclosed upon; therefore, he stated, these individuals were always two years delinquent on their taxes. He continued, the downstate representatives pushed this legislation through because they felt it would force individuals to become current on their taxes in order to prevent their properties from being foreclosed upon. Ms. Delurey noted when individuals defaulted on their taxes, County funds were used to make up the difference. She said she believed the downstate Counties pushed for this change because of the strain put on their finances to make up for the individuals who were behind on their taxes.

Mr. Brock advised when the City of Glens Falls foreclosed upon a home because of taxes they transferred the properties to the IDA (Industrial Development Agency) to sell to a preferred buyer. He queried whether this could be a solution for the County. Mr. Swan explained this was not a valid option for the County, as the City was exempt from certain portions of the law that the County was required to follow. Mr. Monroe pointed out although the amended law assisted the downstate municipalities with bringing their property owners current on their taxes, it penalized individuals who were impacted by circumstances beyond their control that caused them to fall behind on their taxes.

Motion was made by Mr. Beaty, seconded by Mr. McDevitt and carried unanimously to approve a resolution requesting a change in the State Law governing how tax payments were applied as recommended by Mr. Monroe for presentation as the November 21, 2014 Board meeting. *A copy of the resolution request form is on file with the minutes.*

Moving along, Mr. Monroe advised the County Attorney and County Treasurer would like to address the proposed settlement in Alexy, Brothers, et al vs. Town of Queensbury, et al pending Real Property Tax Law Article 7 proceedings. Mr. Auffredou stated this referred to a long standing tax assessment challenge which involved the Town of Queensbury, Queensbury Union Free School District and Warren County. He said Warren County typically did not get involved with Article 7 tax assessment challenges. He explained if a property owner went through the administrative process to challenge their property tax assessment with the Town and the Town denied their tax relief, they could file an Article 7 proceeding to challenge the tax assessment on their property. He apprised this particular proceeding commenced in 2005 as a dual challenge. He continued, there were 60 lakefront property owners initially involved with the two fold challenge which meant they were challenging their tax assessments and the Article 7 proceeding, as well as the Town of Queensbury's reevaluation in 2005. He said this was why the County was named in the proceedings. He stated generally the County received notice of the proceedings, was served with the proceedings and had the opportunity to intervene; however, he said, in this case the County was specifically named in the proceeding, as well. He mentioned through the years the Town of Queensbury Assessors had done a phenomenal job of resolving the vast majority of these properties through settlement discussions. He advised what was left for consideration were the three parcels remaining in the Article 7 tax assessment proceedings. He added the challenge to the Town of Queensbury's reassessment was not part of this process, as it had been settled and no relief was granted. He advised the three properties that remained were Mary Beth Young, 9 Fielding Lane; Richard Young, 47 Assembly Point Road; and John Brothers, 12 Tall Timbers Road. He stated both the Town of Queensbury and the Queensbury Union Free School District had agreed to a settlement in these proceedings. He said typically the County would not be involved but because the County was a named party, their exposure to a tax refund for all three parcels for all the years at issue dating back to 2005 totaled \$11,777.12. He requested a resolution authorizing the County Attorney to execute a stipulation of settlement which would bring these cases to closure. He said he was comfortable with the assessments established for these parcels.

Mr. Beaty questioned whether the new assessment had been lowered, as it would impact the County's tax liability. Mr. Auffredou advised that through the years there were 60 parcels involved, all of which had been slightly adjusted downward. He said they were not substantial changes and all the parcels involved had values of \$1 million or more. He stated while there was a reduction going forward he felt the Town Assessor had reviewed the parcels thoroughly and was confident with the assessments assigned. He added he did not believe the County had standing to hold up a settlement based upon the assessors formulation for an assessment.

Mr. Monroe asked whether the school was named specifically, noting he thought schools were not typically named. Mr. Auffredou explained the school was specifically named and added there were a number of school districts that actively participated in Article 7.

Mr. Monroe queried whether there was a specific source of funding available to pay the settlement and Mr. Swan replied in the negative. He said the matter would need to be referred to the Finance Committee to determine a source of funding.

Motion was made by Mr. Beaty, seconded by Mr. McDevitt and carried unanimously to authorize the County Attorney to execute a stipulation of settlement agreement regarding Alexy, Brothers, et al vs. the Town of Queensbury, the Union Free School District and Warren County in the amount of \$11,777.12 as a result of Real Property Tax Law Article 7 proceedings and refer same to the Finance Committee to determine a source of funding. *A copy of the resolution request form is on file with the minutes.*

Mr. Auffredou advised he had another item he would like to discuss with the Committee. He stated it was not typical for Warren County to receive requests from other Counties; however, he said, there was a request from NYSAC (New York State Association of Counties) for financial support to Wayne County regarding a tax foreclosure auction. He explained that Wayne County, much like Warren County utilized Article 11 tax foreclosure proceedings every year. He apprised in Wayne County there was a property owner who defaulted on their installment agreement; therefore, he stated, Wayne County went through the foreclosure and auction process and sold the parcel to a new owner. He said the former owner then filed a proceeding in bankruptcy and through their bankruptcy counsel maintained that the sale at the auction was a fraudulent transfer under Section 548 of the bankruptcy code because the sale occurred within 24 months of the bankruptcy filing and the property had not sold for fair market value at the auction. He continued, an Adversary Proceeding had been commenced in bankruptcy court, pending in the Western District of New York, and thus far they had been very successful in the proceeding. He advised Wayne County was defending this action, as they were at substantial risk because the new owner had made considerable improvements to the property. He stated as often occurs, he believed the bankruptcy judge was trying to resolve the case for the litigants. He advised Wayne County was in a precarious position because they were being reviewed for significant damages in the context of the tax foreclosure auction. He said the fair market value of the property had been indicated at \$49,000, which was well above the \$4,000 received at the auction. He pointed out Wayne County could be responsible for the difference between the fair market value and the sale price, as well as other expenses they may be deemed responsible for. He commented thus far the bankruptcy court appeared to have agreed or ruled that this transaction constituted a transfer for less than fair market value within the 2 year period under Section 548 of the bankruptcy code.

Mr. Auffredou apprised this case had potential implications for Warren County, as well as all the other Counties in the State that utilized the Article 11 process. He said although there may be a legislative solution to this, there was minimal confidence a legislative solution would be brought forth in the immediate future. Mr. Auffredou noted Wayne County had expended over \$150,000 in Attorney fees thus far to defend this proceeding. He said Wayne County had no more funding available to continue to defend the proceeding; therefore, he stated, NYSAC was requesting financial support in the amount of \$2,000 from other Counties Statewide to continue to defend the proceeding on their behalf. He said thus far a number of Counties had committed to providing the financial support requested and a number of Counties had indicated they were interested. He stated upon his discussion with Mr. Monroe, Mr. Swan and Ms. Delurey he indicated Warren County was interested in contributing subject to receiving approval from the full Board. He commented he felt if Wayne County were to lose, moving forward it could have serious implications Warren County. He said he felt there should be a legislative fix at both the Federal and State levels; however, he stated, this would be difficult to obtain. He advised he felt the best course of action was for Wayne County to continue to defend itself which was their intention but they required financial support to continue to do so. He mentioned he reached out to Washington County to inquire what their intentions were regarding this matter and they indicated they were not in a position at this time to provide financial support. He noted he would not have brought the matter forth if he did not feel it was a good idea.

Mr. Monroe stated he felt the Committee should seriously consider the matter, as it was creating a principle that an auction ordered by a State court was considered a fraudulent transfer under the bankruptcy court and could have serious implications for Warren County. As an example, he stated at the October 18, 2014 foreclosure auction the County received upwards of \$500,000 more than the amount of outstanding taxes due. He said should this lawsuit be successful, these funds, as well as previous years funds, could be at stake; therefore, he apprised, he believed they should provide support. He questioned whether Mr. Auffredou had a chance to research whether it was permissible

for Warren County to lend financial support to another County. Mr. Auffredou explained the theory was this had far reaching impacts to Counties throughout New York State and could put them at substantial risk if Wayne County were to lose. He stated as a result of this possibility the County Attorney's felt there was justification for making a financial contribution. He noted the financial contribution would not go directly to Wayne County, as it would be disbursed to NYSAC and they would distribute the funds. He added NYSAC was setting up a fund for this specific matter. He commented that when balancing of the risk of being challenged for not having the proper authority to do this versus the risk of an adverse outcome and the long term benefits of an adverse ruling for Wayne County, he believed he would side with the long term benefits of making the contribution. He continued, there was legal authority to make the contribution. He added NYSAC had set up a Committee to explore legislative resolutions to this; however, he said, given the climate in Washington at this time they did not feel a modification to the bankruptcy code would occur anytime soon. He emphasized that fraudulent transfer did not mean fraud was involved, as fraudulent transfer defined in the bankruptcy code meant it was sold for less than fair market value within that 24 month period, which was why this transaction was deemed by the court a fraudulent transfer.

Mr. Monroe pointed out there were a number of properties at the October 18, 2014 foreclosure auction that sold for less than their fair market value. Mr. Auffredou said he thought it was feasible for the court to determine that after reviewing the legislative history of Section 548 of the bankruptcy code they did not feel a State court ordered auction or sale at an auction fits within the definition of a fraudulent conveyance within Section 548 but thus far they had not made that determination. Mr. Monroe advised a legislative fix would be to exempt State court ordered auctions from Section 548 of the bankruptcy law. Mr. Swan interjected that he was supportive of the matter, as the results of this lawsuit could be devastating to Counties Statewide.

Motion was made by Mr. Merlino, seconded by Mr. McDevitt and carried unanimously to support NYSAC's request for financial support in the amount of \$2,000 to Wayne County's Lawsuit regarding tax foreclosure auction and refer same to the Finance Committee to determine a source of funding. *A copy of the resolution request form is on file with the minutes.*

As there was no further business to come before the Real Property Tax Services Committee, on motion made by Mr. Merlino and seconded by Mr. McDevitt, Mr. Monroe adjourned the meeting at 10:08 a.m.

Respectfully submitted,
Sarah McLenithan, Secretary to the Clerk of the Board